A BILL FOR AN ACT

RELATING TO PROCUREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI:

SECTION 1. The legislature finds that the State's procurement process requires a clear legislative direction to award contracts to responsible bidders or offerors to increase accountability and enhance performance and to more efficiently utilize taxpayer dollars. Some state contracts may currently be awarded to the lowest bidder without regard to poor past performance. These bidders may be considered qualified despite poor past performance on state contracts, which may result in repeated inefficiencies and substandard work.

Accordingly, the purpose of this Act is to:

(1) Require the past performance of contractors' positive, negative, or lack of previous experience to be considered in bid selection of a contractor;

(2) Require departments to consider available assessments of previous performance on relevant and recent government and private contracts when making contract awards; and
(3) Require the state procurement office to implement a past performance database.

SECTION 2. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

"§103D- Past performance database. (a) The state procurement office shall implement and administer a past performance database with regard to state contractors.

(b) The state procurement office shall adopt rules pursuant to chapter 91 to establish:

(1) Information required to be included in the past performance database; provided that the information shall include:

(A) The name of the state contractor;

(B) The date of the project;

(C) The size of the project;

(D) A brief description of the project;

(E) The responsible managing employees for the project;

(F) Whether the project was timely completed or not;

(G) The project's authorized budget; and
(H) The positive or negative difference between the final cost of the project and the project's authorized budget, if any;

(2) Procedures to inform a contractor of the information contained in the past performance database about that contractor; and

(3) Procedures for a contractor to contest the information contained in the past performance database about that contractor."

SECTION 3. Section 103D-104, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

"Past performance" means available recent and relevant performance of a contractor on state contracts that shall be considered in a responsibility determination within the relevance of the current solicitation, including the considerations of section 103D-702(b)."

2. By amending the definition of "responsible bidder or offeror" to read:
"Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability [which] that will assure good faith performance[—], pursuant to the responsibility determination standards adopted by the policy board."

SECTION 4. Section 103D-302, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Bids shall be evaluated based on the requirements set forth in the invitation for bids. These requirements may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be as objectively measurable[—] as possible, such as discounts, transportation costs, [and] total or life cycle costs[—], and the bidder's past performance on state contracts of similar scope, including but not limited to notices of deficiencies and failure to complete a procurement contract. The invitation for bids shall set forth the evaluation criteria to be used. No
criteria may be used in bid evaluation that are not set forth in
the invitation for bids."

SECTION 5. Section 103D-303, Hawaii Revised Statutes, is
amended by amending subsection (g) to read as follows:

"(g) Award shall be made to the responsible offeror whose
proposal is determined in writing to be the most advantageous,
taking into consideration price and the evaluation factors set
forth in the request for proposals[—], which shall include the
offeror's past performance on state contracts of similar scope,
including but not limited to notices of deficiencies and failure
to complete a procurement contract. No [other factors or]
criteria [shall] may be used in the evaluation[—] that are not
set forth in the request for proposals. The contract file shall
contain the basis on which the award is made."

SECTION 6. Section 103D-306, Hawaii Revised Statutes, is
amended by amending subsection (a) to read as follows:

"(a) A contract may be awarded for goods, services, or
construction without competition when the head of a purchasing
agency determines in writing that there is only one source for
the required good, service, or construction, the determination
is reviewed and approved by the chief procurement officer, the
written determination is posted in the manner described in rules adopted by the policy board, a review of past performance has been conducted, and no objection is outstanding. The written determination, any objection, past performance evaluations relied upon, and a written summary of the disposition of any objection shall be included in the contract file."

SECTION 7. Section 103D-310, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Whether or not an intention to bid is required, the procurement officer shall determine whether the prospective offeror has the financial ability, resources, skills, capability, and business integrity necessary to perform the work. For the purpose of making a responsibility determination, the procurement officer shall possess or obtain available information sufficient to be satisfied that a prospective offeror meets the applicable standards. The procurement officer shall consider past performance of the offeror as it applies to a responsibility determination for the current solicitation. The officer, in the officer's discretion, may require any prospective offeror to submit answers, under oath, to questions contained in a standard form of questionnaire
to be prepared by the policy board. Whenever it appears from
answers to the questionnaire or otherwise, that the prospective
offeror is not fully qualified and able to perform the intended
work, a written determination of nonresponsibility of an offeror
shall be made by the head of the purchasing agency, in
accordance with rules adopted by the policy board. The
unreasonable failure of an offeror to promptly supply
information in connection with an inquiry with respect to
responsibility may be grounds for a determination of
nonresponsibility with respect to such offeror. The decision of
the head of the purchasing agency shall be final unless the
offeror applies for administrative review pursuant to section
103D-709."

SECTION 8. There is appropriated out of the general
revenues of the State of Hawaii the sum of $ or so much
thereof as may be necessary for fiscal year 2020-2021 for design
and implementation of a past performance database, including
consultations with experts, outreach, and information gathering.
The sum appropriated shall be expended by the state
procurement office for the purposes of this Act.
SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect on July 1, 2020.

INTRODUCED BY:

[Signatures]
Report Title:  
Procurement; Past Performance; Contractors; Appropriation

Description:  
Requires the state procurement office to establish a past performance database. Requires that the determination of certain contract awards through the procurement process consider a contractor's past performance. Appropriates funds.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.